IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 467 of 1985
with
CROSS OBJECTION No. 93 of 2007

For Approval and Signature:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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GUJ.STATE TRANSPORT CORPN., - Appellant(s)
Versus
MEGHRAJ GUNDOMAL NEVANI & 1 - Defendant(s)

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Appearance :
MS ARCHANA PATEL for MR HARDIK C RAWAL for Appellant
MR SK BUKHARI for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT
10th October, 2007

ORAL JUDGMENT

This Appeal and the Cross Objection arise from the judgment and award dated 23rd December, 1983 passed by the Motor Accident Claims Tribunal [Main],

Surendranagar in Claim Petition No. 185 of 1983.

On the fateful day ie., 7th November, 1982, the respondent no.1, the claimant in Claim Petition No. 185 of 1983 was travelling in an ST Corporation bus on Dwarka-Vadodara route. The claimant had boarded at Rajkot at around 3 p.m. After travelling for some distance on the National Highway No.8A, at around 4.45 p.m., the bus driver lost control. The bus slipped off the road and collided with a tree injuring several passengers. The claimant was one of such injured passengers. He received incised wound on post aspect of right pinna 2″ x 2″ x 1/2″ and fracture on left scapular region. He received medical treatment at Chotila and Rajkot.

The claimant filed above referred Claim Petition No. 185 of 1983 for compensation in the sum of Rs. 1 Lakh. According to the claimant, he was 52 years of age, he was running a Cloth shop at Jamnagar, that he was earning around Rs. 1,200/= every month, that on account of injury sustained by him, he could not attend the business for six months and that he had suffered permanent disability in the left upper limb. The evidence of the claimant was

supported by medical report Exh.53 and the Doctor's evidence at Exh.43. According to the evidence of the Doctor, the claimant had suffered 25% disability of the left shoulder; that lifting of left arm beyond 80 degree was painful and restricted. The Tribunal observed that the claimant had not produced any evidence in support of the *plea* that he was running a cloth shop and that he was earning Rs. 1,200/= *per month*. In absence of any evidence, the Tribunal assessed the monthly income of the claimant at Rs.500/=. Considering the actual loss of income on account of medical treatment, the medical expenses, the loss of future income on account of permanent partial disability, pain and shock suffered by the claimant, the Tribunal has awarded compensation in the sum of Rs. 24,775/=.

Feeling aggrieved, the Gujarat State Road Transport Corporation has preferred the present First Appeal and the claimant has filed the cross objection for enhancement of the compensation.

Ms. Patel has submitted that the compensation awarded by the Tribunal is excessive. She has submitted the claimant did not produce any evidence

of his income. In absence of any evidence, the monthly income of Rs. 500/= assessed by the Tribunal was much higher. She has also submitted the the sum of Rs. 7,000/= awarded under the head “Pain, Shock & Suffering” is also excessive. She has submitted that considering the partial disability suffered in the upper limb, the learned Tribunal had assessed the loss of future income of Rs. 1,500/= per annum. She has submitted that the Tribunal has erred in considering the permanent disability suffered in the upper limb, rather than over all permanent disability of 12½% assessed by the doctor. The compensation awarded by the Tribunal, therefore, deserves to be reduced proportionately.

Mr. Bukhari has assailed the judgment in so far as the amount of compensation is concerned. He has submitted that the claimant was a shop keeper and was earning Rs. 1,200/= every month. The loss of future income should have been calculated on the basis of the monthly income of Rs. 1,200/=. For the pain, shock and suffering, he has submitted that the claimant was entitled to a sum of Rs. 10,000/=. The compensation awarded by the learned Tribunal,

therefore, requires to be enhanced.

I see no substance either in the Appeal or in the Cross Objection. The learned Tribunal has considered the evidence on record; the injuries sustained by the claimant; permanent disability suffered by the claimant; the extent of medical treatment and approximate income of the claimant. Considering the age of the claimant of 52 years, the Tribunal has adopted the multiplier of 8 years. As to the income of the claimant, the claimant did not adduce any evidence. If he were a shop keeper, he could have produced number of documentary evidence viz., statutory registrations, etc. In absence of any evidence adduced by the claimant, the rough estimate arrived at by the Tribunal cannot be questioned. As to the computation of loss of future income, arrived at on the basis of permanent disability of upper limb suffered by the claimant, the Tribunal cannot be said to have erred.

In above view of the matter, the Appeal and the Cross Objection are dismissed with cost.

{Ms. R.M Doshit, J.}

*Prakash**